STATE OF MICHIGAN

IN THE SUPREME COURT

MICHAEL MARTIN,

Plaintiff-Appellee,

v

MILHAM MEADOWS I LIMITED PARTNERSHIP and MEDALLION MANAGEMENT, INC.,

Defendants-Appellants.

SC No. 154360
COA No. 328240
LC No. 13-000485-NO
(Kalamazoo Circuit Court)

REPLY BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

PROOF OF SERVICE/STATEMENT REGARDING E-SERVICE

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STATEMENT OF APPELLATE JURISDICTION

Defendants-Appellants Milham Meadows I Limited Partnership and Medallion Management, Inc. ("Defendants") refer this Court to the corresponding subsection found at page v of their Application for Leave to Appeal. It is Defendants' collective view that Medallion Management, Inc., should not be a party to this case because it did not execute a lease with Plaintiff-Appellee Michael Martin, thus falling outside of MCL 554.139(1). See Application, pp 21-22. To the extent the pending Application creates the impression that only Milham Meadows I, Limited Partnership is the only applicant, it is now corrected through this Reply Brief.

STATEMENT IDENTIFYING THE JUDGMENT OR ORDER APPEALED FROM AND INDICATING THE RELIEF SOUGHT

Defendants refer this Court to the corresponding subsection found at pages vi-viii of their Application for Leave to Appeal.

STATEMENT OF THE QUESTION PRESENTED

Defendants refer this Court to the corresponding subsection found at page ix of their Application for Leave to Appeal.

STATEMENT OF FACTS

Defendants refer this Court to the corresponding subsection found at pages 1-15 of their Application for Leave to Appeal.

By way of explanation and clarification, Milham Meadows I Limited Partnership *and* Medallion Management, Inc., are each applicants (as demonstrated by the caption to the Application for Leave to Appeal).

STANDARD OF REVIEW AND SUPPORTING AUTHORITY

Defendants refer this Court to the corresponding subsection found under the Argument section at page 18 of their Application for Leave to Appeal.

THE NEED FOR SUPREME COURT REVIEW

Defendants refer this Court to the corresponding subsection found at pages 16-17 of their Application for Leave to Appeal.

ARGUMENT

THE TRIAL COURT PROPERLY GRANTED SUMMARY DISPOSITION ON MR. MARTIN'S CLAIM UNDER MCL 554.139 WHEN: (1) THE BASEMENT STAIRS WERE FIT FOR THEIR INTENDED PURPOSE; (2) THE BASEMENT STAIRS WERE KEPT IN REASONABLE REPAIR; AND (3) DEFENDANTS LACKED NOTICE OF THE ALLEGED DEFECT.

A. MCL 554.139 does not apply to the management company, Medallion Management, Inc.

At pages 21-22 of their Application, Defendants-Appellants argue that the claims against Medallion Management, only, fail under MCL 554.139 because that provision applies only where there is a lease between the parties. Here, the lease was between Mr. Martin and Milham Meadows, only (**Exhibit E**, 2009 Lease). Plaintiff does not respond directly to this argument and has effectively waived any contention that Medallion Management is a proper Defendant under the only remaining theory that survived the Court of Appeals case, liability under MCL 554.139. The Court of Appeals erred when reversing as to Medallion Management, Inc. for its asserted liability under MCL 554.139(1), subsections (a) and (b).

B. The basement stairs were fit for their intended purpose.

At pages 16-20 of his Answer, Plaintiff contends that the Court of Appeals properly determined that there remain material questions of fact as to whether the stairs at issue were fit for their intended purpose, pursuant to MCL 554.139(1)(a). The crux of the argument is that, when taken together, there are numerous aspects of the stairs which were defective and that building code violations combined with these defects to cause Plaintiff's injury (see specifically, page 18). This argument misses the mark. Under *Hadden v McDermitt Apartments, LLC*, 287 Mich App 124; 782 NW2d 800 (2010), the Court of

Appeals held that § 554.139(1)(a) does not require perfect maintenance of a stairway, but rather only that the tenants have "reasonable access" to different building levels (which is the purpose of a stairwell). *Hadden*, 287 Mich App at 130. Plaintiff's argument of "numerous defects" and alleged "building violations" does not survive the simple reality that these stairs were repeatedly used by Plaintiff and others without incident. Mr. Martin testified that he went down to and up from the basement, using the steps, six days a week to train with his boxing equipment, and he had never before slipped and fallen on the first step (**Exhibit K**, Plaintiff's Dep, pp 20-22, 34). As indicated in footnote 6 of Defendants' Application, the math shows that the total number of times Plaintiff successfully navigated the alleged dangerous step was at least 1,872 times. It is beyond purview that stairs may be found unfit for their intended purpose when they have been navigated successfully so many times. To the extent Michigan law would allow otherwise—as found by the Court of Appeals here—this Court is encouraged to consider and resolve the scope of MCL 554.139(1)(a), since this provision has not been analyzed by this Court since 2008. *Allison v AEU Management, LLP*, 481 Mich 419; 751 NW2d 8 (2008).

At a minimum, assuming arguendo the cases cited by Plaintiff are applicable, they conflict with the cases cited by Defendants at pages 25-28 of their Application, thus verifying that there is a split of opinion in the Michigan Court of Appeals. For this reason alone, leave to appeal should be granted to consider this important question.

C. Mr. Martin never gave notice that the top step was slippery or suffered from any other defective condition, and no other evidence suggests that any such defects existed; thus, there is no question of fact on failure to keep the premises in reasonable repair.

At pages 21-24 of his Answer, Plaintiff contends that the Court of Appeals properly determined there exists a question of fact on whether Defendants had actual or constructive notice of the condition of the stairs. Plaintiff's position is that notice that the stairs *generally* were slippery constitutes notice of a specific defect, as alleged, and thus satisfies MCL 554.139(1)(b). Defendants have two responses. First, the "defect" was with the top step, only. Generalized statements regarding the slippery state of the stairs do not satisfy notice of the specific defect, as alleged. Second, the record is replete with formal opportunities for Plaintiff to advise of any defect or difficulties with the stairs. None was made. (See application, pp 29-30). In fact, Plaintiff made affirmative statements that the stairs were in good condition. To now claim that notice was given *otherwise* is to fully contradict the remainder of the record. If, as Plaintiff attempts to do so here, the assertion of a verbal statement constitutes notice, when the tenant *formally* declines to identify a defect in the normal course of inspection of the steps by the landlord, and then makes an affirmative statement that the steps were in good repair, no genuine issue of material fact exists for jury determination. Any other ruling would relegate the formal inspection process and Plaintiff's declarations to a mere footnote on the question of notice. The utility of items such as a move-in inventory checklist would be rendered meaningless for purposes of litigation.

This argument also defeats the requirement that repair defects should be addressed by the landlord upon casual inspection. If, as the record establishes, Plaintiff signed off on

the basement steps being in "good" condition (**Exhibit C**) and the HUD inspections of January 2009 and May of 2010 establish no violation, then it is above and beyond what the law requires to charge the landlord with finding this alleged defect in the top stair upon casual inspection, especially to the extent that this alleged duty is created by an after-the-fact exacting examination by Plaintiff's proposed expert. What the expert may determine on a forensic review does not equate with or support with what a landlord should discover upon casual inspection.

RELIEF

WHEREFORE, Defendants-Appellants Milham Meadows I Limited Partnership and Medallion Management, Inc. request this Court peremptorily reverse those portions of the Michigan Court of Appeals opinion which reversed the trial court's grant of summary disposition. In the alternative, Defendants request this Court grant leave to appeal and issue the same result. Defendants also request the recovery of all costs and attorney fees so wrongfully sustained in pursuing this matter in the Michigan Supreme Court.

Respectfully submitted,

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Dated: November 15, 2016

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STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

Monique M. Vanderhoff, being duly sworn, deposes and says that she is an employee of the law firm of Plunkett Cooney, and that on November 15, 2016, she caused to be served a copy of the Reply Brief in Support of Application for Leave to Appeal, and Proof of Service as follows:

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